

Message Text

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ACTION EB-07

INFO OCT-01 ARA-06 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

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R 061400Z DEC 76

FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC 8999

LIMITED OFFICIAL USE SECTION 1 OF 3 BRASILIA 9997

E.O. 11652: N/A

TAGS: EAIR, BR

SUBJECT: CIVAIR - DISCRIMINATORY BRAZILIAN PRACTICES
AGAINST PANAM

REF: (A) BRASILIA 9980 (B) STATE 281728

FOLLOWING IS THE TEXT OF THE MEMORANDUM WHICH
EMBASSY PROPOSES TO SUBMIT TO CENTRAL BANK AND
FINANCE MINISTRY PURSUANT TO REFTEL (A), SUBJECT TO
DEPARTMENT'S CONCURRENCE. TEXT FOLLOWS:

I. THE U.S. AIRLINE, PANAMERICAN AIRLINES, (PANAM)
FACES A SERIOUS COMPETITIVE DISADVANTAGE IN MARKETING
ITS SERVICES IN BRAZIL. IN THE OPINION OF THE USG, THE
VARIOUS REGULATORY CONTROLS ON THE OPERATION OF THIS
U.S. AIRLINE CREATE AN INEQUITY SINCE THE BRAZILIAN
NATIONAL AIRLINES IS UNDER NO SIMILAR CONSTRAINTS EITHER IN
BRAZIL OR THE U.S.. IT IS LIKELIKE THE OPINION OF THE USG
THAT THESE CONTROLS ARE CONTRARY TO THE SPIRIT OF THE
U.S.-BRAZIL BILATERAL AIR AGREEMENT. WE BELIEVE
THAT A RESOLUTION TO THESE PROBLEMS WOULD BE TO MUTUAL
INTEREST OF OUR TWO COUNTRIES SINCE THE U.S. AIRLINE
PROVIDES AN IMPORTANT STIMULUS TO FOREIGN TOURISM IN
BRAZIL.

II. THE MAJOR AREAS IN WHICH PANAM APPEARS TO
BE DISADVANTAGED INCLUDE:

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1. PROCEDURAL IMPEDIMENTS WHICH DELAY
CONVERSION OF CRUZEIROS INTO DOLLARS

A. REMITTANCE PROCEDURES THAT SUBJECT U.S.
CARRIER TO DELAYED CONVERSION OF CRUZEIROS
RESULTING IN LOSSES FROM DEVALUATIONS

THE CENTRAL BANK PRESCRIBES SPECIFIC
AND DETAILED ACCOUNTING PROCEDURES FOR RE-
MITTING TRANSPORTATION REVENUES. BEFORE AN
APPLICATION TO REMIT CAN BE FILED, A BANK
INSPECTOR MUST VISIT THE U.S. CARRIER'S
ACCOUNTING OFFICES TO RECONCILE THE RECORDS
WITH THE BANK STATEMENT; ONCE THIS IS DONE
AND THE INSPECTOR GIVES APPROVAL, THE AMOUNT
CAN BE REMITTED PROMPTLY. THE BANK INSPECTOR
VISITS THESE OFFICES ONCE A MONTH. FUNDS
ARE THUS DELAYED FOR A PERIOD OF ABOUT 30
- 60 DAYS, DEPENDING ON THE DAY OF THE MONTH
COLLECTED. THIS RESULTS IN EXCHANGE LOSSES DUE TO THE
PERIODIC DEVALUATION OF THE CRUZEIRO.

SINCE THE BRAZILIAN CARRIER FACES NO SIMILAR
RESTRAINTS IN THE U.S., IT IS REQUESTED THAT THE
CENTRAL BANK, AS A MATTER OF RECIPROCITY,
PERMIT THE AMERICAN CARRIER TO REMIT FUNDS
AS THEY ACCUMULATE. THE CENTRAL BANK AGREE TO
PERFORM A POST AUDIT TO ASSURE THAT PANAM
SALES WERE IN ACCORDANCE WITH PERTINENT
FINANCIAL REGULATIONS.

B. RESTRICTION ON THE SALE OF PREPAID
TRANSPORTATION

ACCORDING TO CENTRAL BANK REGULATIONS
(COMMUNIQUE NO. 85 DATED OCTOBER 15, 1968)
THE ONLY TRANSPORTATION THAT CAN BE SOLD
IN BRAZIL IN CRUZEIROS IS THE TRANSPORTATION
OF NATIONALS AND RESIDENTS OF BRAZIL, EITHER
INITIATING TRAVEL OR RETURNING TO BRAZIL.
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A PROBLEM IS CREATED, HOWEVER, WHEN PASSENGERS
COMING INTO BRAZIL -- SUCH AS TECHNICIANS
UNDER WORK CONTRACTS, GUESTS OF PUBLIC
ADMINISTRATION AGENCIES, SCIENTISTS, ARTISTS,
PROFESSORS, DOCTORS, DENTISTS, ENGINEERS AND
OTHER CATEGORIES -- HAVE TRANSPORTATION
CHARGES INCLUDED IN THEIR CRUZEIRO CONTRACTS.
IN ORDER TO ISSUE THESE PASSENGERS A TICKET

TO TRAVEL TO AND FROM BRAZIL BY THE LOCAL
OFFICE OF THE U.S. CARRIER, PERMISSION
MUST BE OBTAINED FROM THE CENTRAL BANK.
SUCH AUTHORIZATION MUST BEAR THE NAME OF THE
CARRIER.

PANAM ASSERTS THAT THE BRAZILIAN
CARRIER HAS NO DIFFICULTY WHATEVER IN
OBTAINING THESE AUTHORIZATIONS. THE AMERICAN
CARRIER MAINTAINS THAT IT USUALLY ENCOUNTERS
DELAYS, THUS PUTTING THE U.S. CARRIER AT A
CLEAR DISADVANTAGE. ENTITIES WHICH CONSTANTLY
TRANSFER TECHNICIANS BACK AND FORTH TEND
TO USE THE BRAZILIAN CARRIER TO AVOID
DIFFICULTIES AND EXPEDITE APPROVALS.

THE U.S. CARRIER REQUESTS THAT THE NAME
OF THE CARRIER BE ELIMINATED FROM THE
APPLICATION REQUESTING CENTRAL BANK APPROVAL.

C. BLOCKED FUNDS

PANAM HAS REPORTEDLY BUILT UP MODEST
AMOUNTS OF BLOCKED CRUZEIROS REPRESENTING
TRANSPORTATION AND RELATED REVENUES WHICH THE
CENTRAL BANK WILL NOT PERMIT THEM TO REMIT OR
USE FOR LOCAL EXPENSES.

THESE BLOCKED FUNDS ACCUMULATE AS FOLLOWS:

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LIMITED OFFICIAL USE SECTION 2 OF 3 BRASILIA 9997

WHEN AIR FREIGHT FORWARDERS OR CARGO AGENTS EXECUTE A COLLECT AIRWAY BILL ON PANAM FOR SHIPMENT ON THEAT AIRLINE TO BRAZIL, THEY ENTER THE AMOUNT DUE THE CARRIER FOR THE TRANSPORTATION. THEY ALSO ENTER AN AMOUNT AS "DUE AGENT", WHICH IS DUE THE FORWARDER FOR OTHER TRANSPORTATION COSTS AND/OR OTHER FEES. THE U.S. CARRIER PAYS THE U.S. FORWARDER FOR OTHER TRANSPORTATION COSTS AND/OR OTHER FEES. THE U.S. CARRIER PAYS THE U.S. FORWARDER THE FULL AMOUNT, WHICH IT COLLECTS FROM THE CONSIGNEE IN BRAZIL. THE CENTRAL BANK, HOWEVER, WILL ONLY PERMIT PANAM TO REMIT THE AMOUNT OF TRANSPORTATION AND OTHER COSTS WHICH ARE PAYABLE FOR SERVICES PROVIDED DIRECTLY BY THE U.S. CARRIER. OTHER TRANSPORTATION CHARGES (SUCH AS GETTING THE MERCHANDISE FROM CHICAGO TO NEW YORK, FOR EXAMPLE) AND OTHER CHARGES REMAIN BLOCKED IN BRAZIL.

FROM US VIEW, THIS APPEARS TO PENALIZE THE U.S. CARRIER SINCE THE NATIONAL AIRLINE CAN PAY FREIGHT FORWARDERS WITH BALANCES IN THE U.S. AND REDUCE ITS REMITTANCES TO BRAZIL. HENCE, IT IS REQUESTED THAT THE U.S. CARRIER BE ALLOWED TO REMIT THE FULL AMOUNT OF TRANSPORTATION COSTS WHICH CAN BE DEMONSTRATED LIMITED OFFICIAL USE

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TO HAVE BEEN EFFECTED IN CONNECTION WITH A DELIVERY TO BRAZIL.

IN ADDITION, THE CENTRAL BANK AUTHORITIES REFUSE TO PERMIT REMITTANCE OF AIRLINE-RELATED REVENUES, SUCH AS CARTAGE AND HANDLING AT ORIGIN ON IMPORT CARGO, SALES OF PROMOTIONAL ITEMS, SUCH AS FLIGHT BAGS, INFLIGHT BEVERAGE SERVICE, EARNED INTEREST ON DEPOSITS, ETC. THIS APPEARS CONTRARY TO THE PRINCIPLE OF RECIPROCITY, AS THE BRAZILIAN CARRIER IS UNDER NO SUCH CONSTRAINTS IN THE U.S.. IT IS REQUESTED, THEREFORE THAT THE U.S. CARRIER BE PERMITTED TO REMIT ALL AMOUNTS CURRENTLY BLOCKED, UPON A SHOWING THAT SUCH AMOUNTS WERE DERIVED FROM TRANSPORTATION OR RELATED AIRLINE SERVICES.

2. CARGO COMPETITIVE DISADVANTAGE -
REQUIREMENT OF IMPORT LICENSE CONTRARY TO

INTERNATIONAL NORMS

THE CENTRAL BANK REQUIREMENT THAT PANAM PRODUCE A COPY OF THE IMPORT LICENSE, ALONG WITH OTHER DOCUMENTATION, AT THE TIME OF PRESENTING A REQUEST FOR REMITTANCE FOR EVERY SHIPMENT IS, IN THE US VIEW, CONTRARY TO THE ICAO CONVENTION, ANNEX 9, WHICH STATES THAT A COUNTRY CANNOT REQUIRE IMPORT LICENSES, COMMERCIAL INVOICES, OR DOCUMENTS OTHER THAN AN AIRWAY BILL FROM THE AIRLINES.

THIS RESULTS IN A NUMBER OF DIFFICULTIES:

A. FAILURE TO SUPPLY AN IMPORT LICENSE RESULTS IN A TOTAL DISALLOWANCE OF THE TRANSPORT FEE, WHICH IS AN ADDITIONAL SOURCE OF BLOCKED FUNDS.

B. IF THE FREIGHT CHARGES ON THE IMPORT (OR EXPORT) LICENSE ARE DIFFERENT FROM THOSE INDICATED ON THE AIRWAY BILL, APPROVAL FOR LIMITED OFFICIAL USE

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REMITTANCE IS AUTOMATICALLY DENIED. IN ORDER TO OBTAIN APPROVAL, THE U.S. CARRIER IS REQUIRED TO OBTAIN AN AMENDMENT TO THE LICENSE FROM THE SHIPPER OR CONSIGNEE. SINCE THE EXPORTER/IMPORTER CAN ONLY ESTIMATE THE FREIGHT CHARGES AT THE TIME OF TAKING OUT EXPORT/IMPORT LICENSE, THIS REQUIREMENT SEEMS INEQUITABLE. IT GIVES THE BRAZILIAN CARRIER A CLEAR ADVANTAGE SINCE IT DOES NOT HAVE TO MEET THE SAME CENTRAL BANK REQUIREMENTS.

C. WITH RESPECT TO CONSOLIDATED CARGO, THE REQUIREMENT THAT ALL SHIPMENTS IN THE CONSOLIDATION BE CLEARED BEFORE APPROVAL FOR REMITTANCE FOR ANY PART OF THE CARGO IS GRANTED IS ANOTHER CLEAR DISADVANTAGE FOR THE U.S. CARRIER GIVEN THE HEAVY BURDEN OF DOCUMENTATION REQUIREMENTS. THE BRAZILIAN CARRIER CAN AND DOES DELIVER IMPORT CARGO IMMEDIATELY UPON ARRIVAL, AND ANY PAYMENT FOR COSTS IN THE U.S. CAN BE MADE OUT OF BALANCE HELD IN THE U.S..
THUS, THE DELIVERY TIME BY THE U.S. CARRIER IS DELAYED THREE TO FOUR DAYS DUE TO THE DOCUMENTATION THAT HAS TO BE PRODUCED TO OBTAIN PERMISSION TO REMIT.

THE NET RESULTS OF THESE REQUIREMENTS
ON THE U.S. CARRIER IS A SUBSTANTIAL LOSS
OF BUSINESS. IT IS, THEREFORE, REQUESTED
THAT THE CENTRAL BANK ADHERE TO THE ICAO
CONVENTION, ANNEX 9, AND PERMIT REMITTANCE
SOLELY ON THE PRESENTATION OF AN AIRWAY BILL.

3. BRAZILIAN LAWS WHICH DISCRIMINATE
AGAINST U.S. CARRIERS

THE FOLLOWING BRAZILIAN LEGISLATION DISCRIMINATES
AGAINST THE U.S. CARRIER:

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A. DECREE LAW 1219, MAY 15, 1972.
ARTICLE 3, PARAGRAPH 3, OF THIS DECREE
ALLOWS BRAZILIAN EXPORTERS TO ADD THE COST
OF INSURANCE TO THE VALUE OF THE EXPORT
FOR THE PURPOSE OF CALCULATING EXPORT
INCENTIVES IF THE SHIPMENT IS CARRIED
ON THE BRAZILIAN AIRLINE. SUCH UNEQUAL
TREATMENT AS BETWEEN U.S. CARRIERS AND
THE BRAZILIAN AIRLINE TENDS TO SHIFT CARGO
IN FAVOR OF THE LATTER.

THE U.S. CARRIER WISHES TO BE PLACED
ON AN EQUAL COMPETITIVE BASIS WITH THE BRAZILIAN
CARRIER.

B. DECREE LAW 29, NOVEMBER 14, 1966,

AS REVISED BY DECREE LAW 106, JANUARY
16, 1967, ARTICLE 4. THIS LEGISLATION
OUTLINES THE CONDITIONS FOR THE TRANSPORTATION
OF CARGOES OF GOVERNMENT ENTITIES AND OFFICIAL
TRAVEL ON BRAZILIAN CARRIERS. THE DEFINITION
OF A GOVERNMENT ENTITY STATED THEREIN IS BROAD.
IT INCLUDES THE FEDERAL, STATE, MUNICIPAL
SECTORS, PLUS A LARGE NUMBER OF MIXED ENTERPRISES.
IN EFFECT, A LARGE PORTION OF THE BRAZILIAN
ECONOMY FALLS WITHIN THIS DEFINITION.

THE U.S. LAW, ON THE OTHER HAND,
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REQUIRES TRAVEL AND TRANSPORTATION ON
U.S. CARRIERS FOR U.S. GOVERNMENT-
FINANCED TRANSPORTATION ONLY.

IT IS REQUESTED THAT, TO PROVIDE RECIPROCITY,
THE BRAZILIAN REQUIREMENT FOR TRANSPORTATION ON THE
NATIONAL AIRLINE BE LIMITED TO CENTRAL GOVERNMENT
FINANCED TRANSPORTATION.

4. FINANCIAL LOSSES RESULTING FROM
INABILITY TO DISCOUNT PROMISSORY NOTES
AND REMIT PROCEEDS-

BRAZIL WAS SIGNATORY TO THE IATA- SPONSORED
PAY-LATER PLAN WHICH RESOLVED THAT:

IN BRAZIL ALL SALES UNDER A MEMBER'S
INSTALLMENT OR "PAY LATER" PLAN SHALL BE
SUBJECT TO THE CONDITIONS SET FORTH BELOW:

(A) CREDIT SHALL BE EXTENDED ONLY FOR
THE AMOUNT OF THE AIR FARE AND ONLY IN LOCAL
CURRENCY;

(B) CHARGES SHALL BE ASSESSED FOR INTEREST
AND/OR FINANCING AT NOT LESS THAN 12 PERCENT PER
ANNUM ON THE AMOUNT OF THE ORIGINAL UNPAID BALANCE;

(C) THE INITIAL PAYMENT SHALL BE MADE
IN LOCAL CURRENCY NOT LATER THAN THE DATE
OF ISSUANCE OF THE TICKET AND SHALL BE
NOT LESS THAN 20 PERCENT OF THE TOTAL
AMOUNT OF THE SALE;

(D) PAYMENT OF THE BALANCE REMAINING
AFTER THE INITIAL PAYMENT, PLUS CHARGES,

SHALL BE MADE IN EQUAL MONTHLY INSTALLMENTS WITHIN TEN MONTHS.

CONTRARY TO THIS UNDERTAKING, AND TO COMMON INTERNATIONAL BUSINESS PRACTICES, LIMITED OFFICIAL USE

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THE CENTRAL BANK HAS DETERMINED THAT PAY-LATER NOTES HELD BY THE U.S. CARRIER MAY NOT BE SOLD SINCE SUCH A SALE WOULD CONSTITUTE INDIRECT FINANCING OF TRAVEL. THE FACT THAT THESE RECEIVABLES MAY BE USED AS COLLATERAL IN NEGOTIATING A LOAN WITH A BRAZILIAN FINANCIAL INSTITUTION STILL LEAVES THE U.S. CARRIER AT A CONSIDERABLE DISADVANTAGE SINCE THE PROCEEDS OF SUCH A LOAN MAY NOT BE REMITTED TO THE U.S., AND THE CARRIER MAY NOT HAVE THE NEED TO USE THESE CRUZEIROS LOCALLY. ON THE OTHER HAND, THE NATIONAL CARRIER, WHOSE OBLIGATIONS ARE MOSTLY DENOMINATED IN CURZEIROS, DOES NOT SUFFER FROM THESE RESTRICTIONS. IT CAN UTILIZE THE PROCEEDS OF A CRUZEIRO LOAN TO INCREASE ITS CASH FLOW.

THE U.S. CARRIER, THEREFORE, REQUESTS THE CENTRAL BANK TO INTRODUCE THE FOLLOWING CHANGES TO PUT THEM ON AN EQUAL COMPETITIVE FOOTING WITH THE NATIONAL CARRIER:

(A) THAT IT BE PERMITTED TO SELL PAY-LATER NOTES; AND (B) THAT IT BE PERMITTED TO REMIT THE PROCEEDS TO THE U.S.
CRIMMINS

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